

Overstreet, Greg (ATG)

From: David Cuillier [davidc@wsu.edu]
Sent: Friday, December 09, 2005 4:01 PM
To: Overstreet, Greg (ATG)
Cc: 'Earl-Hubbard, Michele'
Subject: Feedback on model rules

Greg,

I finally got to the model rules and must say I am impressed with the amount of work you all did. This could be helpful for making things go a little more smoothly around these parts. You may not need my feedback, but I'll sling it to you anyway. I've lumped my comments into three categories: Awesome Things; Questions; and Major Grab-The-Pitchfork-And-Protest Concerns.

Awesome Things

1. Overall the wording is easy to read and understand.
2. I like how the rules balance access with government efficiency. There are a lot of parts in here that make sense (suggestions for how to make a request, putting information online, etc.).
3. I like the provisions for how agencies can handle large requests on an installment basis. Great idea. I hope it works!
4. I like the recommendation for mediation (I hope the AG or some other office is able to create a mediation outlet!)

Questions and Thoughts

1. On Page 5, under "Scope of coverage of Public Records Act," it mentions court records aren't subject to the act (as per *Nast v. Michels*), but it might be something to clarify. In that survey of clerks quite a few said they apply the PDA to court records (while others didn't). That's kind of a mess statewide.
2. Under the same paragraph, I like how you define what an agency is. I hope the AG writes an opinion on whether the acts apply to foundations for public universities. A lot of gray over that, but I think they meet the criteria listed. Some states are beginning to pass laws specifically making university foundations subject to public disclosure laws.
3. Page 6, "Requirement that agencies adopt reasonable regulations..." The second graph worries me a tad, or at least how some people will interpret it. When it is stated that requests should not "unreasonably disrupt the operations of the agency" that leaves it wide open to interpretation. I agree requests shouldn't cripple an agency, but where is that line drawn? Just a thought. No answers.
4. Page 7, "Construction and application of act" concerns me slightly when it states that the act is really geared toward records that informs people about governmental decisions and not for records containing "purely personal information that has absolutely no bearing on the conduct of government." I understand what that is about, but I worry about how that will be interpreted as well. For example, in the example provided on page 12 talking about how a personal email sent by a public employee from work wouldn't be subject to the act, I would argue that that email should be public because it does have bearing on the conduct of government. It tells us that public employees are using public resources for personal use (a little flap in Spokane over that lately, eh?). A lot of public records that appear to be personal actually are helpful for examining government operations.
5. Page 10 "Making a request for public records." I wonder how it might flow to start by suggesting people first call and talk to the people in person to help narrow the request, know for sure who to send it to, etc., then move to the written request. Now it starts with the written request and then mentions that the agency can take a request verbally.
6. Page 11, "Public records defined." Might be nice to say a writing also includes emails. It doesn't say it in the RCW, but it might clear up confusion and a lot of questions people have regarding that.
7. Page 13, "Index of records." Too bad this index idea isn't working that well. It's a great idea, but no teeth in the law and I doubt most agencies take it seriously.
8. Page 21, "Obligations of requestors." Nice section. I didn't know people submitted "stealth" requests to trick agencies into not responding. Interesting stuff.

9. Page 27, "Means of providing access." I didn't see (maybe I missed it) any discussion of an agency's obligation to mail copies if requested. Aren't they required by law to do so? I might be wrong (and getting old), but I thought that was the case.

Major Heartburn

I'm very, very, very concerned about the part regarding electronic records. This has gotten me worked up since I started requesting databases in 1992 from a variety of local and state agencies. I have several concerns, and I think many of the journalists who deal with data frequently might share these concerns (Tom Boyer, Warren Cornwall, etc., at The Seattle Times, Scott North at The Herald in Everett, and others):

1. Page 33, "Providing electronic records." (also, Page 34, (g), and Page 35, "Access to electronic records." It seems to me, pursuant to the intent of the law, that when a record is available in either paper or electronic form, the requestor, not the agency, should have the choice for what format the records are provided. If I ask for a copy of the data in Excel, I should get a copy of the data in Excel. Not a printout. If the agency has a problem with providing it electronically, then it seems to me that it is incumbent upon the agency to prove that it cannot provide it electronically. Providing electronic records should be encouraged because it saves money (and often time) for both parties in copying costs (a citizen requesting a 10,000-page document would have to pay at least \$1,500 in copying charges, not to mention the agency's staff time copying it, while the same electronic document can be provided in seconds via email for free). Second, most governments are computerized now, using systems that easily transfer data in different formats (the days of government 9-track tape spools are coming to an end), so it should not be terribly difficult to provide the information electronically. Third, most good analyses of government information cannot be done effectively in paper form; data are the best ways of examining large quantities (millions) of records through a database manager. In the media we call this computer-assisted reporting or database journalism, which has led to stories that have improved society (most Pulitzer-prize winning stories nowadays are based in part on analysis of government data. If government has the ability to choose the format then that cripples the media's and citizens' ability to examine its government. Other data journalists could tell you lots of stories and examples of this.
2. Page 33, "Customized access to data bases." I do not like this concept of customized access to data bases at all. I think this could create serious problems for journalists and computer-skilled citizens. It actually puts us backward a decade. As I mentioned in my previous email, it seems to me that an agency should be required to produce code to copy data from its computer to a disk. To me that is not customized access. That, to me, is simply making a copy of data. A person writing code to copy data is no different, in my mind, to a person gathering files from archives, redacting certain information, and walking to a photocopy machine. It seems like today working with data is getting easier and easier – a lot easier than digging up paper files, digging through them, photocopying them, then mailing them. I think this idea of computer programming as a complicated, involved burdensome thing is a vestige of the old days when it was new and strange. Today I don't think it's that big of a deal. It's time to leave the mystique of the computer world behind. It's just not that hard. Specifically, I've got a hitch in my giddy-up over the section on Page 35, "Access to electronic records," which suggests that an agency print out on paper records when it has software that makes it tricky to provide. Journalists have been helping agencies work through this for a decade. It's pretty easy to export data as a tab-delimited text file that can then be imported into Excel or any other program. Every government agency I have encountered has been able to easily export its data in this format and usually email it to me or burn it to a CD. Of the dozens of databases I've requested from government agencies I have yet to encounter a problem with exporting information, and I almost always get the information for free (I paid for just one database: \$100 from the Department of Health).
3. Page 36, "Complications of providing customized access to electronic records..." I'm not in favor of saying that by copying some fields from a database creates a new record (and therefore the request can be denied). I already covered those comments in my previous email. It isn't creating a new government record – it's copying an existing record with exempt information redacted. It's redaction, not creation.
4. Page 42, "Costs for electronic records." Also, Page 45, "Charges for electronic records." Why can agencies charge for staff time in copying electronic data but they aren't allowed to charge for copying paper records? Shouldn't electronic records be treated the same as paper records? Why the distinction?
5. My suggestion: Apply same legal standards of paper records to electronic records. On p. 43 the rules state that no fees or costs should be levied for copying paper records (and some of those paper requests can take tons of staff hours and resources). So why do we allow agencies to charge fees/costs for staff time for copying electronic records? On Page 36, "Complications of providing customized access..." it says "If customized access required significant agency staff time or special computer programming, the agency is not obligated to provide customized access." Does that apply to paper records too? If a large customized search for paper records that requires a lot of staff time is a lot of work for an agency, does that mean they can deny the request? Nope. The agency has to comply, but is able to get the information out in chunks. Why not apply the same standard to computer records? An agency could say, "Look, we would need to get our computer

programmer on this and she says it would take 20 hours to work on (I've never seen it take more than 40 minutes), so we'll let her work on it four hours a week so we don't hinder our operations. You should get your data in five weeks." That would work for everyone.

6. If this is a big issue, then perhaps a group could come together to work through these issues. I hate to suggest a committee, but gads, I think the electronic records portion of these rules are going to create some major problems. However, maybe I'm all wet here. An initial query could be sent around to journalists in the state who request and analyze government data. I'm curious what they think. Also, similar queries could be made for computer folk at government agencies. I think what we would find is that it really isn't that hard to make copies of data. I could be wrong here, but that's what I encountered day-to-day in dealing with data as a journalist for a dozen years (as you can tell, I was really into computer-assisted reporting). If you like I can pull together a list of journalists in the state who use data routinely (I used to coordinate an informal group we called Computer-Assisted Reporting in Washington (CARwash for short).

Anyway, Greg, despite my concerns over the data part, I think you've done a great job working on this and am grateful that you have been hired for the work. Keep it up!

Dave Cuillier